IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27-08-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.34 of 2007

Rabic Kadar, 32 years ... Appellant

Vs.

State by Inspector of Police
Erode Town Police Station
Crime No.1380 of 2005
Erode District ... Respondent

Criminal Appeal under Section 374(2) of Cr.P.C., against the conviction under Section 498(A) IPC sentencing him to undergo three years R.I., in the judgment dated 16-12-2006 made in S.C.No.154 of 2006 on the file of the Additional District and Sessions Court/Fast Track Court No.1, Erode.

For appellant :: Mr. N. Manoharan
For respondent :: Mr. P. Govindarajan

JUDMENT

Challenge in this criminal appeal is to the conviction and sentence dated 16-12-2006 passed in Sessions Case No.154 of 2006 by the Additional District and Sessions Court/ Fast Track Court - I, Erode.

2. The schema of the case of the prosecution is that the accused is the husband of the deceased, by name Fathima Fairoz. On 18-10-2005, a person, who lent money has come to the house of the accused and directed the said Fathima

Fairoz to execute a document, and due to that a tussle has arisen in between the accused and deceased. The accused has attacked the said Fathima Fairoz in the presence of children and due to overtact of the accused, the said Fathima Fairoz has committed suicide. After occurrence, the mother of the deceased, by name Mehabbunisa (P.W.1) has given a complaint and the same has been registered in Crime No.1380 of 2005 and marked as Ex-P1.

3. On receipt of Ex-P1, the investigating officer, viz., P.W.10 has conducted investigation, examined connected witnesses and also made arrangements to conduct autopsy and accordingly, the Doctor by name, M. Loganathan, P.W.6, has conducted post-mortem and he found the following external and internal injuries:

> "Appearances found at the post-mortem.. A Body of a female lies on its back well nourished, symmetrical, eyelids closed, tongue-inside the mouth. Internal examination Heart - 200 gms congested - Lungs R 400 gms L 350 gms. Both congested. Stomach - empty, Liver - 1400 gms congested, spleen - 100 gms congested, Kidneys each - 150 gms both congested, Bladder - empty, uterus c/s.Copper-T present inside. Brain -1400 gms congested, spinal column intact. The following viscera are preserved for chemical analysis 1. Stomach and contents 2. Intestine and contents 3. Sample of liver 4. Kidney 5. Preservative.
>
> Opinion: Reserved for pending reports of chemical analysis of viscera. The deceased died at 8.20p.m. on 9/10/05 at G.H. Erode. ....
>
> ...Final Opinion (Cause of death of deceased)

The deceased died of organophosphorous insecticide poisoning."

The Post-mortem report has been marked as Ex-P5.

4. After transfer of P.W.10, his successor-in-office viz., P.W.11, has continued further investigation. After completing the same, laid a final report on the file of the Judicial Magistrate Court - II, Erode and the same has been taken on file, in P.R.C.No.4 of 2006.

5. The Judicial Magistrate -II, Erode, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Erode Division and taken on file in Sessions Case No.154 of 2006 and subsequently made over to the file of the Trial Court.

6. The Trial Court after hearing both sides and upon perusing the relevant records has framed first charge against the accused under Section 498A, IPC, second charge against him under Section 306, IPC and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 11 have been examined and Exs-P1 to P14 and M.O.1 have been marked.

8. When the accused has been questioned under Section 313, Cr.P.C., as respects the incriminating materials available in evidence against him, he denied his

complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

9. The Trial Court after hearing both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 498A, IPC and sentenced him to undergo three years' rigorous imprisonment. The Trial Court has found the accused not guilty under Section 306, IPC. Against the conviction and sentence imposed by the Trial Court under Section 498A, IPC, the present criminal appeal has been preferred at the instance of the accused, as appellant.

10. The sum and substance of the case of the prosecution is that the accused is the husband of deceased, Fathima Fairoz. On 08-10-2005, one person, who lent money has come to the house of the accused and asked the deceased to execute a document in respect of his loan and due to that, a miff has arisen between the accused and deceased. The accused in the presence of children has attacked the deceased and since the accused has attacked the deceased, she decided to put an end to her life and accordingly, on 09-10-2005 at about 2:00p.m., she committed suicide.

11. The learned counsel appearing for the appellant-accused has raised the following points so as to set aside the conviction and sentence passed against the appellant-accused:

(a) Both P.Ws.1 and 3 are not at all eye-witnesses and their evidence cannot be believed in; (b) in the instant case, Section 498A, IPC is not attracted; (c) independent witnesses have not been examined.

12. In order to resile the contentions put-forth on the side of the appellant-accused, the learned Additional Public Prosecutor has contended that in the instant case, the mother of the deceased has been examined has P.W.1, and daughter of both the accused and the deceased, has been examined as P.W.3 and their specific evidence is that on the date of occurrence the accused has attacked the deceased. Even though, the accused has faced a charge under Section 306, IPC, the Trial Court has acquitted him and for the purpose of invoking Section 498-A, IPC, the prosecution is having ample evidence and the Trial Court after considering the enormous evidence available on the side of the prosecution has rightly found the accused guilty under Section 498A, IPC and therefore, conviction and sentence passed by the Trial Court under the said Section are not liable to be interfered with.

13. Before contemplating the rival submissions made on either side, the Court has to look into Section 498A, IPC and the same reads as follows:

> "498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose

> of this section, "cruelty" means—(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; ....."

A cursory look of the said Section would clearly go to show that even if a wilful conduct on the part of the accused would affect life, limb or health of the affected person it would come within the contour of the said section.

14. The defacto complainant has been examined as P.W.1 and her specific evidence is that the accused has attacked the deceased. Likewise, the daughter of both the accused and deceased, by name, Ayisha Nasreen has been examined as P.W.3 and her specific evidence is that during the course of occurrence her father has attacked her mother. Ofcourse, it is true that both P.Ws.1 and 3 are closely related to the deceased. Simply because they are closely related to the deceased, their evidence cannot be eschewed nor discarded. From the evidence given by P.Ws.1 and 3, the Court can very well come to a conclusion that in the place of occurrence, the accused has attacked the deceased and the act of the accused would definitely affect limb or health of the deceased and therefore, it is needless to say that the act of the accused would come within the purview of Section 498A, IPC. *Therefore, the first and second contentions put-forth on the side of the appellant-accused cannot be accepted.*

15. Now, the Court has to look into the third contention put-forth on the

side of the appellant-accused. It is true that in the instant case with regard to attack alleged to have been made by the accused on the person of the deceased, no independent witness has been examined and that itself would not militate the case of the prosecution. Further, one Manzoor has spoken about the quarrel, which has arisen in between the accused and deceased. Therefore, viewing from any angle, the Court cannot come to a conclusion, that the appellant-accused has had no connection with the offence alleged to have been committed under Section 498A, IPC. The learned counsel appearing for the appellant-accused has drawn the attention of this Court to the following decisions:

(i) 2007 (9) SCC 721 (*Appasaheb and another Vs. State of Maharashtra),* wherein the Honourable Supreme Court has held that since essential ingredients of Section 304-B, IPC have not been established, the concerned accused cannot be muttered with liability under the said Section.

(ii) 2010 (7) SCC 667 (*Preeti Gupta Vs. State of Jharkhand)* wherein the Honourable Supreme Court has held that the relatives of husband have been living in different places and under the said circumstances, they cannot be unnecessarily roped in, in criminal proceedings.

16. In the instant case, as pointed out earlier, the specific contention put-forth on the side of the prosecution is that in the place of occurrence, the accused has attacked the deceased. For the purpose of proving the said aspect, the

prosecution has adduced an unimpugnable evidence, by way of examining P.Ws.1 and 3 and their evidence cannot be rejected merely on the ground of relationship and further, this Court has already observed that the act of the appellant-accused would come within the purview of Section 498A, IPC. Therefore, viewing from any angle, there is no incertitude in coming to the conclusion that the appellant-accused has committed an offence punishable under Section 498A, IPC. The Trial Court after considering the available evidence on record has rightly invited the conviction and sentence against the accused, under the said Section.

17. In view of the foregoing elucidation of both factual and legal premise, this Court has not found any infirmity nor illegality in the conviction passed by the Trial Court.

18. The learned counsel appearing for the appellant as a residual contention contended that the appellant-accused is the husband of the deceased and therefore, some leniency may be shown in awarding punishment.

19. The Trial Court has awarded three years rigorous imprisonment against the appellant-accused under the said Section. Considering the fact that the occurrence has taken place in the year 2005 and also considering the relationship between the appellant and deceased and also P.W.3, this Court is of the view to modify the substantive sentence as stated infra.

In fine, this criminal appeal is allowed in part. The conviction passed under

Section 498A, IPC by the Trial Court is confirmed. But, the sentence imposed by the Trial Court is modified as follows:

"The appellant-accused is sentenced to undergo six months' rigorous imprisonment, instead of three years."

The Trial Court is directed to take suitable steps so as to immure the accused-appellant in prison to serve the remaining period of sentence.

27-08-2015

glp
Index: yes/no

To

1. The Inspector of Police
   Erode Town Police Station

2. The Additional District and
   Sessions Court/Fast Track Court No.1, Erode

A. SELVAM,J.

glp

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